



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF TRUHLI v. CROATIA

(Application no. 45424/99)

JUDGMENT

STRASBOURG

28 June 2001

FINAL

12/12/2001

This judgment will become final in the circumstances set out in Article 44 § 2.

In the case of Truhli v. Croatia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 December 2000 and on 7 June 2001,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 45424/99) against the Republic of Croatia lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Nikola Truhli (“the applicant”), on 25 September 1998.

2. The applicant, who had been granted legal aid, was represented by Boro Radić, a lawyer practising in Zagreb (Croatia). The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant alleged that the Constitutional Court’s decision to terminate the proceedings concerning his constitutional claim challenging the constitutionality of the laws that served as a basis for a decrease of his military pension violated his right of access to a court.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 12 December 2000, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant served in the Yugoslav People's Army (hereinafter the "YPA") and retired from service in 1987. His military pension was assessed according to his rank and years of service and was paid from the Federal Pension Fund in Belgrade. The payments terminated in December 1991, following the dissolution of the Socialist Federal Republic of Yugoslavia.

9. Three separate proceedings subsequently dealt with the decrease of the applicant's military pension.

10. Firstly, on 12 December 1992, the Croatian Social Security Fund, Pula Office, assessed the applicant's pension, as from 1 October 1992, to 63,22% of the amount he had received until 31 December 1991. The applicant appealed against that decision and, after his appeal was dismissed, instituted administrative proceedings with the Administrative Court (*Upravni sud Republike Hrvatske*) which dismissed the applicant's claim on 19 May 1993.

11. On 7 February 1994 the applicant lodged a constitutional complaint claiming that the decisions of the administrative bodies and the Administrative Court to decrease the amount of his pension violated his constitutional rights. He alleged specifically that the decision to decrease his military pension was not based on legal grounds.

12. On 7 April 1999 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint concerning the lower bodies' decisions to reduce his pension. It stated that these decisions were based on the laws that prescribed that the pensions of the former YPA officers would be assessed in the amount of 63,22 % of what they had received in December 1991.

13. Secondly, on 29 April 1993, the applicant lodged a constitutional claim challenging the constitutionality of the Decree regulating the pension rights of the former YPA officers whose service in the YPA terminated prior to 31 December 1991 (*Uredba o ostvarivanju prava iz mirovniskog i invalidskog osiguranja osoba kojima je prestalo svojstvo aktivne vojne osobe u bivšoj JNA do 31. prosinca 1991* - Official Gazette 46/92 and 71/92). He alleged specifically that his constitutional rights were violated insofar as his pension had been drastically decreased.

14. On 18 October 1993 the Croatian Parliament passed the Act on regulation of pensions of the former YPA officers that, *inter alia*, reiterated that the amount of the former YPA officers' pensions was to be 63,22 % of what they had received in December 1991 (*Zakon o ostvarivanju prava iz mirovinskog i invalidskog osiguranja pripadnika bivše JNA* - Official Gazette 96/93).

15. On 4 February 1998 the Constitutional Court terminated the proceedings concerning the applicant's constitutional claim of 29 April 1993 due to the fact that the above legislation had entered into force.

16. Thirdly, on 10 November 1993 the applicant lodged a constitutional complaint against the Act of 18 October 1993, challenging the constitutionality of that Act as a whole.

17. As of 1 January 1999 new legislation entered into force regulating the pension rights of all Croatian citizens (*Zakon o mirovinskom osiguranju* – Official Gazette 102/98).

18. Consequently, on 20 January 1999 the Constitutional Court terminated the proceedings regarding the applicant's constitutional claim of 10 November 1993.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitutional Act on the Constitutional Court (hereinafter the “1991 Constitutional Court Act” - *Ustavni zakon o Ustavnom sudu*, Official Gazette 13/91)

19. The relevant provisions of the 1991 Constitutional Court Act read as follows:

Section 15

“Every person has a right to institute proceedings challenging the constitutionality of the laws...”

Section 23 § 2

“Each person whose rights have been violated by a decision based on the legislation declared unconstitutional or unlawful may ask the body that took the decision to vary it...”

Section 27

“The Constitutional Court shall terminate proceedings concerning the constitutionality of legislation that has been repealed or brought into line with the

Constitution and statute law while those proceedings are pending before the Constitutional Court.”

Section 28 § 1

“Every person, who considers that any of his constitutional right has been violated by a decision of judicial or administrative body or any other body invested with public authority, may lodge a constitutional complaint with the Constitutional Court.”

Section 30

“By a decision adopting a constitutional complaint the Constitutional Court quashes the contested decision and remits a case for re-trial.”

**B. The 1999 Constitutional Act on the Constitutional Court
(hereinafter the “1999 Constitutional Court Act”)**

20. The relevant provisions of the 1999 Constitutional Court Act read as follows:

Section 55 § 1

“The Constitutional Court shall decide upon the constitutionality of the contested legislation even in cases where that legislation is repealed or amended while the proceedings are pending before the Constitutional Court.”

Section 55 § 2

“When the Constitutional Court declares the legislation contemplated in § 1 unconstitutional or unlawful, each person whose rights have been violated by a decision based on that legislation may ask the body that took the decision to vary it.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complains that he was denied effective access to a court in breach of Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

22. The applicant complains that the Constitutional Court failed to decide his claim challenging the constitutionality of the Act of 18 October 1993 regulating the decrease of his military pension. He contends that the Constitutional Court, thus, violated his right of access to a court.

23. According to the Government the issue concerned in the proceedings terminated by the Constitutional Court's decision of 20 January 1999 were not the applicant's constitutional rights and freedoms, but an abstract review of the constitutionality of the contested Act. However, as the new legislation regulating pension rights of all Croatian citizens, including the former YPA officers, entered into force on 1 January 1999, the Constitutional Court, pursuant to Section 27 of the 1991 Constitutional Court Act had no other choice but to terminate those proceedings.

24. They further contend that the alleged violation of the applicant's individual rights and freedoms was examined by the Constitutional Court in the proceedings concerning the applicant's constitutional complaint of 7 February 1994. In respect of those proceedings the Constitutional Court, by its decision of 7 April 1999, dismissed the applicant's complaint as it assessed that his constitutional rights and freedoms were not violated by the lower bodies' decisions to decrease his pension.

25. The Court reiterates that in the determination of civil rights and obligations the right to a court, of which the right of access is one aspect (see the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, p. 18, § 36), is not absolute; it may be subject to limitations (see the *Ashingdane v. the United Kingdom* judgment of 28 May 1985, Series A no. 93, pp. 24–25, § 57). However, these limitations must not restrict the exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (see, among other authorities, the *Fayed v. the United Kingdom* judgment of 21 September 1994, Series A no. 294-B, pp. 49–50, § 65; the *Bellet v. France* judgment of 4 December 1995, Series A no. 333-B, p. 41, § 31; and the *Levages Prestations Services v. France* judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40).

26. In the present case the Court notes that the applicant disagrees in substance with the authorities decisions to decrease his military pension and in order to settle that dispute the Court finds that Croatian law undoubtedly afforded the applicant the possibility of bringing judicial proceedings. He availed himself of that possibility by lodging an application with the Administrative Court, thus contesting the lower bodies' decisions to decrease his military pension. After this recourse showed to be unsuccessful for the applicant, he had two possibilities to pursue his case - by bringing a constitutional complaint alleging that his constitutional rights were violated

by the lower bodies' decisions, or by bringing a constitutional claim challenging the constitutionality of the laws that had served as a basis for decisions decreasing his military pension. The applicant used both.

27. It is not for the Court to assess the ways and means by which the Constitutional Court may examine a case. It will confine itself to examining the specific issue before it and observes in this respect that although the Constitutional Court terminated, on 7 February 1998 and on 20 January 1999, the proceedings concerning the applicant's constitutional claims, due to the enactment of new legislation, it decided on the applicant's individual constitutional complaint on 7 April 1999. In the proceedings which led to this decision the applicant alleged that his constitutional rights had been violated by the Administrative Court's decision of 19 May 1993 upholding the lower bodies' decision to decrease his pension. On 7 April 1999 the Constitutional Court dismissed the applicant's complaint stating that the applicant's constitutional rights had not been violated.

28. In these circumstances the Court finds that the applicant had access to a court as secured by Article 6 of the Convention for the determination of the civil rights and obligations involving him. Furthermore, the fact that the Constitutional Court decided prior to its decision of 7 April 1999 to terminate other proceedings due to the fact that the contested legislation was no longer in force does not restrict the exercise of this right in such a way or to such an extent that the very essence of the right was impaired.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President